



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 6 October 2004

Opinion no. 290/2004

Restricted
CDL(2004)027rev
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

**ON THE LAW ON CONDUCTING
MEETINGS, ASSEMBLIES,
RALLIES AND DEMONSTRATIONS**

OF THE REPUBLIC OF ARMENIA

on the basis of comments by

Ms Finola FLANAGAN (Member, Ireland)
Mr Giorgio MALINVERNI (Member, Switzerland)

Introduction

1. In March 2004, Mr T. Torosyan, vice-speaker of the Armenian National Assembly, requested the Venice Commission to carry out an expert assessment of the draft law “on the procedure of conducting gatherings, meetings, rallies and demonstrations in the Republic of Armenia” (CDL(2004)22).

2. Ms Finola Flanagan and Mr Giorgio Malinverni were appointed to act as rapporteurs. On 8 April 2004, they submitted their comments (CDL(2004)26 and 25 respectively) which were sent to Mr Torosyan in view of the second reading of the draft law which had been put forward and scheduled for 12 April 2004. The OSCE/ODIHR was also consulted.

3. The law was adopted by the National Assembly on 28 April 2004 (CDL(2004) 42).

On 1 September 2004, Mr Tigran Torossyan, Vice-Speaker of the Armenian National Assembly, presented certain explanations relating on the law.

4. The present opinion, which relates to the law as adopted on 28 April and was prepared on the basis of the individual comments by the Rapporteurs taking into account also the explanations provided by Mr Torossyan, was adopted by the Commission at its ...Plenary Session (Venice, ... 2004).

I. The European standards on the freedom of assembly

5. The law under consideration concerns the right of freedom of assembly protected, *inter alia*, by Article 11 of the European Convention on Human Rights (hereinafter “the Convention” or “ECHR”) and Article 21 of the International Covenant on Civil and Political Rights.

6. The Commission finds it useful to set out in brief the broad parameters of the right of assembly, so as to set the context in which limitations on the exercise of the right may be created and enforced.

7. The freedom of assembly is a fundamental rights in a democracy and should not therefore be interpreted restrictively.

8. The right of assembly covers all types of gathering including assemblies and meetings, demonstrations, marches and processions, whether public or private provided they are “peaceful”. Where organisers or participants have violent intentions likely to result in violence or disorder there is no right to freedom of assembly . However, incidental or sporadic violence or criminal acts committed by others in the assembly will not remove protection from an individual nor will the violent response of counter-demonstrators to an otherwise peaceful assembly .

9. Article 11 ECHR is a “qualified” right and the state is therefore entitled to justify what is a *prima facie* interference with the right. Article 11(2) ECHR expressly permits limitations on assemblies provided they are “such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. Therefore restrictions may be allowed for the regulation of public order as a legitimate

aim and the State is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others.

10. The right of assembly can be regulated in its exercise and a regime of prior authorisation of peaceful assemblies is not necessarily an infringement of the right. A system of permits and its application, however, must not affect the right of assembly as such: prohibition of an assembly must always be capable of justification having regard to the express terms of Article 11(2) ECHR as interpreted by the case law of the European Court of Human Rights .

11. The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This necessarily means that laws regulating assemblies must not in any circumstances create unjustifiable restrictions in relation to holding peaceful assemblies. Rather, the state must act in a manner calculated to allow the exercise of the freedom. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community i.e. by applying the principle of proportionality.

II. Preliminary comments as regards the *form* of the regulation of the right of assembly

12. Before examining the law on conducting public events in Armenia, the Commission considers it appropriate to reflect on the general questions of whether it is necessary and desirable to regulate the exercise of the freedom of assembly *through a specific law*, and if so, to what extent.

13. The exercise of fundamental rights and freedoms is a constitutional matter *par excellence* and, as such, should be governed in principle primarily by the Constitution (see, *mutatis mutandis*, Opinion on the draft law on freedom of conscience and religious entities of Georgia, CDL-AD(2003) 20, § 4) and by the Convention.

14. Fundamental rights should, insofar as possible, be allowed to be exercised without regulation, except where their exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with fundamental rights such as the right of peaceful assembly is indeed required by the Convention.¹ The relevant regulation, in other words, should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa.

15. Accordingly, in the Commission's opinion, it is not indispensable for a State to enact a specific law on public events and assemblies, as control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law.

16. States may nonetheless decide to enact laws specifically regulating the freedom of assembly (and indeed several European States do have similar laws).

17. Assemblies of a public character may be subjected to a system of permits (see para. 10 above). The Commission considers however that a bureaucratic and formalistic approach to such

¹ Articles 8, 9, 10 and 11 ECHR allow for restrictions and limitations insofar as they are, *inter alia*, in accordance with the law or prescribed by law.

system might end up impairing, when not preventing, the exercise of the freedom of assembly and of expression.

18. In conclusion, the Commission is of the view that laws specifically devoted to the right of freedom of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details (see CDL(1995)37, *Avis sur le projet de loi sur le droit de réunion et manifestation de la République de Moldova*, pp. 2-4; see also CDL-AD(2002)27, *Opinion on the law on assemblies of the Republic of Moldova*).

III. General comments as regards the substance of the regulation of the right to freedom of assembly

19. The right to freedom of assembly is guaranteed by the Armenian Constitution (see CDL(2000)25). Its Article 26 provides in fact that “Citizens are entitled to hold peaceful and unarmed meetings, rallies, demonstrations and processions”.

20. The law under consideration states at Article 1 that its purpose is to create conditions to allow *citizens, foreigners and stateless persons* to exercise the right of peaceful assembly in order to express opinions and to receive and disseminate information in public places at the same time as securing public safety.

21. The Commission welcomes the extension of the enjoyment of this right to non-Armenian citizens (see also CDL-INF (2001)17, *Report of the Venice Commission on the revised Constitution of Armenia*, § 27).

22. The law (article 2-4) sets criteria by which various types of “public event” are distinguished one from the other. Some of these public events require notification and authorisation (“mass public events in areas of general public use) and some do not (“other events”, “non-mass public events”, “meetings, assemblies, rallies, demonstrations in areas not of general use”).

23. A fundamental problem in this respect is that the Convention permits restrictions to be placed on the right of freedom of assembly only in the circumstances listed in Article 11(2) (“in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”), while the distinctions drawn between various types of assembly or “public event” in the Armenian law and pursuant to which restrictions are imposed, are not such as to provide a proper link to the permissible reasons for restrictions contained in Article 11.

24. The dangers to national security or public safety, the likelihood of disorder or crime, danger to health or morals or the rights and freedoms of others may arise irrespective of whether, for example, a public event is for broadly political purposes or whether it is for cultural or religious purposes; whether it is organised for more or for fewer than a hundred participants; whether it is in a public or non-public place; whether it is organised by citizens or non-citizens, whether it is “organised” or spontaneous. Nonetheless, it is those distinctions which under the Armenian law govern the lawfulness of and circumstances in which public events may be held. Generally speaking, in the law there is no overriding requirement in any given case that the restrictions have to be proportionate and for relevant and sufficient reasons. Therefore these distinctions would have the capacity to permit state authorities to restrict assemblies for reasons which are not permitted by the Convention and excessively restrict the right of assembly.

25. The law is, in general, designed to regulate events of a broadly political character, held in public, with distinct treatment, in certain circumstances, of events with more than (mass public event) and less than 100 participants (non-mass public event). However, threats to public order may equally arise in connection with small, non-political protest on private property. Such events should also be capable of proper control.

IV. Analysis of the law

26. Article 1, entitled “Objectives and subject of regulation of the Law”, contains a list of public events whose conduct is regulated under the law. These are: meetings, assemblies, rallies (processions) and demonstrations (including pickets). The law further regulates “other events”.

27. A “public event” is thus, under Article 2 of the law, a “peaceful and equitable meeting, assembly, rally (procession) or demonstration (including sit-down strikes) ...in areas of general public use... for the purpose of expressing opinions, seeking, obtaining or disseminating information or views on economic, social, political, spiritual or other claims, problems and issues. It is a “mass” public event if it is participated in by more than 100 people, otherwise it is a “non-mass” public event. This definition has to be contrasted with the definition of an “other event”, which encompasses “celebrations, ceremonies, cultural or sport events” to which the law is intended in general not to apply. Meetings, assemblies and demonstrations are considered to be static, whereas rallies are conducted via movement from one location to another, including via transportation.

28. The Commission finds these definitions and distinctions artificial and difficult to follow. In practice, it would often be difficult to distinguish between a “public event” “to express...opinion on economic, social, political, religious or other needs, problems and issues, to seek, receive or disseminate information or ideas” on the one hand and “other mass events” organised to “conduct celebrations, rituals, cultural or sport events...” on the other. Cultural events, are frequently also expressions of opinion on social, political or other issues and they disseminate information and ideas. An assembly primarily coming within the definition of an “other mass event” might well have a combination or mixture of celebration or ritual with protest or an expression of opinion on a matter which would otherwise be within the definition of a “public event”.

29. As for the threshold of 100 participants in order for a demonstration to require prior notification and authorisation, it seems arbitrary and, at any rate, useless: as has already been underlined (see para. 24 above), a demonstration with less than 100 participants may well constitute a more serious threat to public order than a more crowded one.

30. Since the State is only entitled to interfere with the exercise of the right in accordance with strict conditions, such a confusing set of definitions of the key concepts of the law has the danger that it would allow for control, both arbitrary and in excess of what is permitted by the Convention, of the right of assembly by the public authority.

31. The law does not permit “spontaneous” assemblies, except non-mass public events. In fact, Article 5 presupposes that an assembly or gathering will always have an “organiser” and provides that any mass public event without an organiser may not proceed; Article 14 provides that a mass public event may be terminated in case all organizers are absent. This limitation and regulation of mass public events would appear to apply in all circumstances where an organiser

is absent and is not linked in any way to the reasons set out in the Convention permitting restriction of the right of assembly.

32. The Commission notes that, in contrast with the Convention requirements(see also CDL-AD (2002)27, § 16), in order to be lawful all assemblies of one hundred or more within the meaning of “public event” require advance notification and, in substance, an authorisation. Indeed, while it is true that, strictly speaking, an “authorisation” for a mass public event is not required in advance, the reasons for prohibition of a demonstrations listed in Article 13 include:

- lack of required documentation;
- another mass public event in the same location at the same time;
- the possibility of danger to people including confrontation with opposing demonstrations in the vicinity;
- prohibitions by other law;
- disruption of traffic;
- unlawful goals or objections.

33. In the circumstances, it may reasonably be said that an authorisation is in fact required, where the authorised body is required to consider if the notification is sufficiently organised to arrange for the public consideration.

34. However, a peaceful demonstration not interfering with public order should not automatically be subject to such restrictions.

35. As regards the rights and duties of organizers of public events, the Commission notes with satisfaction that the adopted law has been improved in respect of the previous draft (see CDL(2004)22), whose Article 6 imposed excessive responsibilities on the organizer.

36. Article 7 provides for a right to participate in public events, arguably in unnecessary detail. The Commission welcomes the deletion in the adopted text of the general obligation of participants “to comply with the requirements of public ethics”, which was unlikely to fulfil the requirement of being adequately prescribed by law.

37. Article 9 § 3 prohibits absolutely the conduct and organisation of public events of any size (mass or non-mass) in a list of locations which is so extensive as to amount to an excessive limitation on the right of assembly. No connection is required to be made between the prohibition of a public event on the one hand and its location and threats to security or public order as required by Article 11 of the Convention on the other. By way of example, a “gathering” of even two people with a protest banner would be prohibited on any bridge, at any airport or railway, near any “deteriorating building” or construction site, in the “working areas of state bodies” or within 150m of the “areas of establishment of special state significance”. This provision does not take in due consideration the circumstance that, in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention (“Appelwirkung”, as it is called in German).

38. The Commission notes that, according to the Armenian authorities, the listed prohibitions are for “security reasons”. However this is not stated in the law itself and thus it is not linked to a permissible reason for restructure of the guaranteed right.

39. Under Article 10 of the law, mass or non-mass public events in areas of general public use are subject to the restrictions and procedural requirements already mentioned. Furthermore while Article 10 § 3 expressly permits the organisation of mass public events in areas of general use “for the purposes of election or referendum campaign,” these are not permissible where they would violate, amongst other things, traffic regulations or where they would take place in a prohibited area referred to in Article 9 or are subject to the requirements of a consent to the event given in accordance with Article 11. In the light of their paramount importance, it would be excessive that demonstrations about elections or referenda should be in all cases prohibited where they interfere with traffic regulations.

40. The Commission has noted that according to the Armenian authorities there is no restriction on account of infringement of traffic rules, but such restriction appears in the English version of both paragraphs 2 and 3 of Article 10 of the law. This discrepancy may depend on an inaccurate translation.

41. Articles 11 and 12 involve excessive bureaucracy surrounding the notification and discussion of notification prior to the granting of consent or prohibition of a mass public event. In addition to reasons for prohibition already mentioned, prohibition is automatic if “the notification is not accompanied by all documents required under Article 11 or any required information is missing”. The Commission notes with satisfaction that the new paragraph 5 of Article 12 provides for the possibility for the organisers to supplement the information submitted and “fix the flaws” in the notification, so that consideration of the notification may be pursued. The Commission nevertheless maintains its impression that the onerous procedural requirements and mandatory time limits and the detailed requirements pursuant to Article 12 are such as would be likely to disincline many people from organising a public event. It would also necessarily interfere with the holding of spontaneous public events.

42. Article 13 provides for grounds for prohibition and are formulated in such a way, as taken together with the rest of the law, that there is inadequate capacity by the authorising body to follow the principle of proportionality and allow events which would not pose security or public order difficulties or would not risk violating other persons’ rights, even though they might be in breach of formal requirements. The ground for possible termination of a demonstration mentioned in Article 13 § 1 point 8 (“if the event pursues *unlawful goal or objectives*”) appears to be too vague to be acceptable.

43. The Armenian authorities suggest that point 8 of Article 13 § 1 could be removed. In the Commission’s opinion, this would be helpful. However, it is not satisfactory to rely on a constitutional provision that domestic laws that contravene the European Convention on Human Rights “will lose their legal force” – they should not be introduced in the first place. The same argument applies to reliance on the fundamental Principles of Administration and Administrative Jurisdiction.

44. As regards counter-demonstrations, the Commission welcomes the deletion in the adopted text of the general prohibition to organize or conduct public events “in places where at the same time an authorised public event is being or is due to be conducted” (former Article 9 § 2 e). Article 13 § 1 point 7 now provides for the possibility for the authorized body to refuse the authorisation to conduct a manifestation in the immediate vicinity of another manifestation “if there is reliable information that there exists a clear danger of confrontation between opposing parties”. The right to counter-demonstrate is guaranteed under Article 11 of the Convention, even though “in a democracy [such right] ... cannot extend to inhibiting the exercise of the right

to demonstrate (see Plattform “Ärzte für das Leben” v. Austria judgment of 21 June 1988, Series A no. 139, § 32). Accordingly, it is essential that the right to counter-demonstrate should only be limited in connection with genuine security or public order considerations.

45. The Commission welcomes the proposal of the Armenian authorities to amend point 7 along these lines.

46. Article 14 relates to termination of a public event and the circumstances in which this would be required are governed by other articles. As regards the possibility of termination in case of absence of all organizers, see above, § 31.

47. Article 15 provides for liability for violations of the provisions of the law. The Commission welcomes the deletion in the adopted text of the provision that “organisers shall bear material liability for any damage caused”.

V. Conclusions

48. Fundamental rights should, insofar as possible, be allowed to be exercised without regulation, except where its exercise would pose a threat to public order and where necessity would demand state intervention. The relevant regulation should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa.

49. Laws specifically devoted to the right of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details.

50. The Armenian law does not correspond to this general requirement and sets out with excessive details the conditions for exercising the constitutionally-guaranteed right of assembly.

51. The law as adopted contains certain improvements in respect of the draft law previously examined by the Commission; these improvements relate in particular to the extension of the enjoyment of this right to non-citizens, the possibility of integrating the documentation accompanying a request for authorisation of a public event, the possibility of organising counter-demonstrations and the more reasonable responsibilities of the organizer.

52. The law however still presents several substantial shortcomings : it continues to be excessively detailed with excessive differentiation between categories of event in a manner which is not properly linked to permissible reasons for restrictions. In particular:

- the distinctions drawn between various types of “public events” in the Armenian law and pursuant to which restrictions are imposed, are not such as to provide a proper link to the permissible reasons for restrictions contained in Article 11 of the Convention, which contains no quantitative thresholds nor definitions;
- there is no overriding requirement in any given case that the restrictions have to be proportionate and for relevant and sufficient reasons; the authorities should instead be in the position to allow events which would not pose security or public order difficulties or would not risk violating other persons’ rights, even though they might be in breach of formal requirements;

- the definitions of public events contained in the law appear to be artificial and difficult to follow in practice;
- the distinct treatment, in certain circumstances, of events with more than (mass public event) and less than 100 participants (non-mass public event) does not appear justified, as threats to public order may equally arise in connection with less crowded demonstrations;
- there is no room for spontaneous assemblies, except “non-mass” ones, while spontaneous assemblies are undoubtedly guaranteed under Article 11 of the Convention;
- the limitations on the venues for conducting public events are unreasonably strict and absolute;
- non respect of traffic regulations should not be an *a priori* reason to prohibit a public event;
- the procedural requirements and mandatory time limits and the detailed requirements in order for a mass public event to be authorised are so onerous as to likely disincline many people from organising a public event.

53. The Commission welcomes that the Armenian authorities are willing to consider amending certain aspects of this law. The Commission considers however that more, and more significant, amendments, as outlined in this opinion, are necessary in order to bring this law fully in line with European standards. The Commission remains at the disposal of the Armenian authorities in this respect.